

# DEFENDANTS' EXHIBIT 3

(July 27, 2020 Letter from S. Buergel to D. Jeffries)

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July 27, 2020

## **BY ELECTRONIC MAIL**

David Jeffries, Esq.  
1345 Avenue of the Americas, 33rd Floor  
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*Cardwell v. Davis Polk & Wardwell LLP, et al.*  
*(1:19-cv-10256-GHW)*

Dear David:

We write regarding the July 18, 2020 document production made by plaintiff (the "Production") in the above-captioned action.

Despite the Court's July 7, 2020 order that plaintiff "provide complete responses to all pending discovery requests no later than July 18, 2020," plaintiff's Production, and plaintiff's responses to defendants' interrogatories, are critically deficient. ECF 60.

Among other things, Mr. Cardwell has failed to produce, in whole or in part, documents known to be responsive and in his possession, custody, or control. He has selectively produced portions of responsive messaging chains, by photographing certain communications and concealing others. He has omitted attachments from responsive

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messages. He has failed to produce messages from communication and media platforms he admits to using. He has selectively redacted responsive and nonprivileged content from communications, including names of those with whom he was communicating. He has failed to produce any communications (email, text messages, social media communications) with several individuals identified at Interrogatory Nos. 6, 7, or 8, notwithstanding that communications with such individuals would plainly be responsive.

These issues belie any claim as to the sufficiency of the Production, and suggest a failure to conduct a good-faith collection or review for responsiveness of materials in plaintiff's possession, custody, or control. Plaintiff's failures continue to deprive defendants of information to which they are entitled, and that is critical to the claims and defenses in this action.

Defendants request that plaintiff's counsel be prepared to meet and confer about each of these topics this afternoon or tomorrow morning, in advance of the Court conference scheduled for 1:00 on Tuesday, July 28, 2020. If plaintiff fails promptly to cure the deficiencies above, defendants will have no choice but to inform the Court of plaintiff's continuing failure to abide by his discovery obligations.

The following are examples of deficiencies in plaintiff's production. This list, and these examples, are not exclusive.

- **Plaintiff has improperly redacted responsive content**, *see, e.g.*, CARDWELL000514; CARDWELL000540; CARDWELL000570, **sometimes entirely**, *see* CARDWELL001179
- **Plaintiff has failed to produce full document families, including from personal email accounts.** *See, e.g.*, CARDWELL00052; CARDWELL000521 (no attachment); CARDWELL000580 (same); CARDWELL000695; CARDWELL000708; CARDWELL001440; CARDWELL001753; CARDWELL000675; CARDWELL000680.
- **Plaintiff has produced only selective screenshots of responsive text- and social media message chains.** *See, e.g.*, CARDWELL001225; CARDWELL001246; CARDWELL002062, CARDWELL002063, CARDWELL002070, CARDWELL002076. Plaintiff must extract and have counsel review for responsiveness all text message, email, and social media chains believed to contain potentially responsive material; plaintiff may not cherry-pick the responsive messages he wishes to produce.
- **Plaintiff has failed to produce text messages** with any of the individuals identified at Interrogatory Nos. 6, 7, or 8.
- **Plaintiff directed his contacts to use the communications platform Signal, CARDWELL000675, but has failed to produce responsive Signal messages.**

- **Plaintiff has improperly redacted the names of his correspondents in social media communications.** *See* CARDWELL002035 through CARDWELL002088.
- **Scanned pages are cut off throughout the production, obscuring text.** *See, e.g.,* CARDWELL000046; CARDWELL000062; CARDWELL000266.
- **Certain documents were only partially printed and produced.** *See, e.g.,* CARDWELL000530.
- **Certain documents have no content.** *See, e.g.,* CARDWELL001520; CARDWELL001521.
- **Plaintiff failed to produce documents on which he relied in drafting his complaint and that are thus known to be in his possession, custody, or control, calling into question the thoroughness of the remainder of the production.**<sup>1</sup> For example, plaintiff has produced a series of reviews attached to defendants' NYSDHR position statement, *see, e.g.,* CARDWELL002012 through CARDWELL002033, but has failed to produce other related documents known to be in his possession (because he relied upon them in his complaint), calling into question the remainder of the production.

Plaintiff's interrogatory responses are similarly deficient. Plaintiff has refused, without basis, to identify the "email addresses and social media accounts (including account names) used or controlled" by him during the relevant period, despite having conceded that he used such accounts to exchange responsive communications, and despite having produced communications for a handle—"Dr. Umar Johnson"—used by plaintiff and not previously disclosed in this litigation. Interrogatory Response No. 13.

He has refused to answer a number of defendants' interrogatories, asserting that his inability to "understanding how this Interrogatory relates to the claims or defenses asserted in this action" is a basis upon which to decline to respond pending further "determination" by the parties. *See, e.g.,* Interrogatory Response Nos. 11, 14, 15.

He has refused, without basis, to identify those with knowledge of any alleged "impairment to his name and reputation," pending an "attempt to clarify" and "narrow" the Interrogatory. Interrogatory Response No. 5.

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<sup>1</sup> Plaintiff's production proves that his claim, in his recent submission to the Court, that he has not received a copy of defendants' submission to the NYSDHR, is false; plaintiff's production includes, at CARDWELL002012 through CARDWELL002033, the reviews submitted by Davis Polk to the NYSDHR in December 2017, all of which bear the FOIL ledger applied by the Firm for purposes of that submission.

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He has refused to respond to defendants' request for a "computation of all categories of damages" sought by plaintiff. Interrogatory Response No. 10.

He has failed to seek, at any time prior to or following the Court's July 18 deadline, a meet and confer with defendants on any of the topics referenced above.

Defendants are available to meet and confer about these issues anytime today or tomorrow morning, in advance of tomorrow's Court conference. Defendants further demand that plaintiff cure all failures to comply with the Court's July 7, 2020 order not later than August 3, 2020.

Defendants reserve all rights, including to take any and all steps to address the above deficiencies or others arising out of further review of the responses or additional information discovered through the meet and confer process or otherwise.

Sincerely,

/s/ Susanna Buergerl

Susanna Buergerl